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*Bankruptcy Counsel to the Lead Plaintiffs and the Proposed Class*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:

RETAIL GROUP, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-33113 (FJS)

(Jointly Administered)

**SECURITIES LEAD PLAINTIFFS' LIMITED OBJECTION TO DEBTORS'  
MOTION FOR ENTRY OF AN ORDER (A) MODIFYING AND CONFIRMING  
THE AMENDED CHAPTER 11 PLAN CONSISTENT WITH THE DISTRICT  
COURT'S MEMORANDUM OPINION, (B) RATIFYING ACTIONS TAKEN IN  
RELIANCE ON THE ORDER DATED FEBRUARY 25, 2021, AND (C)  
GRANTING RELATED RELIEF**

Joel Patterson and Michaella Corporation ("Lead Plaintiffs"), the court-appointed lead plaintiffs in the securities fraud class action captioned as *In re Ascena Retail Group, Inc. Securities Litigation*, Case No. 2:19-cv-13529-KM-JBC (the "Securities Litigation"), pending in the United States District Court for the District of New Jersey (the "District Court"), for themselves and the putative class they seek to represent in the Securities Litigation (the "Proposed Class"), hereby submit this limited objection (the "Limited Objection") to the above-

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <http://cases.primeclerk.com/ascena>. The location of Debtor Mahwah Bergen Retail Group, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 933 MacArthur Boulevard, Mahwah, New Jersey 07430.

captioned Debtors'<sup>2</sup> *Motion for Entry of an Order (A) Modifying and Confirming the Amended Chapter 11 Plan Consistent with the District Court's Memorandum Opinion, (B) Ratifying Actions Taken in Reliance on the Order Dated February 25, 2021, and (C) Granting Related Relief* (the "Motion") [Docket No. 2562]. In support of this Limited Objection, Lead Plaintiffs respectfully state as follows:

### **LIMITED OBJECTION**

1. The Lead Plaintiffs do not oppose the Motion or the relief sought therein as a general matter. However, the Debtors' desire to expeditiously re-confirm their Plan following the reversal and remand by the District Court must not come at the expense of consistency with the District Court's Remand Opinion and Remand Order.

2. Specifically, the proposed order on the Motion that was filed by the Debtors on February 24, 2022 (the "Proposed Order") [Docket No. 2587] arguably blesses findings of fact and conclusions of law that have since been reversed by the District Court, by wholesale incorporating by reference the findings of fact and conclusions of law made in connection with the prior confirmation hearing and prior confirmation order. Indeed, the Proposed Order limits such findings and conclusions to those that are "consistent with the Remand Order and Remand Opinion" and also incorporates by reference the findings of fact and conclusions of law made by the District Court. However, the Proposed Order is ambiguous as to which findings and conclusions apply here, post-remand.

3. There should be no mistake that any findings of fact or conclusions of law made in connection with the now-voided Third-Party Release (as defined in the Remand Opinion) are likewise void in light of the District Court's holding that the Bankruptcy Court lacked authority

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

to adjudicate various claims that were intended to be subject to such release, including those relating to the Securities Litigation. As the District Court stated:

[I]t takes only a cursory review of the Third-Party Releases and the Releasing Parties to find released claims that the Bankruptcy Court lacked authority to adjudicate. For example, the Third-Party Release would bar securities claims, such as those brought by the Securities Plaintiffs, against former directors and officers of [the Debtors], even if the claims arose before [the Debtors] filed for bankruptcy and those directors and officers had no involvement in the Bankruptcy Proceeding.

*See, e.g.*, Remand Opinion, p. 29.

4. Lead Plaintiffs submit that this ambiguity can be resolved by modifying paragraph 6 of the Proposed Order, as follows, in bold below:

Article I.A.129 and VIII.F of the Plan and paragraph 119 of the Confirmation Order are hereby deemed stricken and are of no force or effect. Any action taken at any time pursuant to Articles I.A.129 or VIII.F of the Plan or paragraph 119 of the Confirmation Order is hereby deemed void *ab initio*. **Notwithstanding anything to the contrary in this Order, no findings of fact or conclusions of law previously made by or any evidence previously presented to this Court in connection with the Third-Party Release Provision shall be incorporated into the record, and all such findings of fact, conclusions of law, and evidence are hereby stricken from the record and shall not be binding on any party in any proceeding.**

5. For the reasons set forth above and to ensure consistency with the Remand Opinion and Remand Order, Lead Plaintiffs respectfully submit that, to the extent the Court grants the Motion, the Proposed Order should be modified as set forth herein.

*[Remainder of page intentionally left blank]*

Dated: March 2, 2022

Respectfully submitted,

/s/ Ronald A. Page, Jr.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 2, 2022, I caused a copy of the foregoing to be served through the Court's EM/ECF system on all parties receiving notices in these cases.

By */s/ Ronald A. Page, Jr.*

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Counsel